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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Bert W. Elliott)	Group Art Unit 3635
)	
Serial No.:	09/515,928)	Examiner: Robert Canfield
)	
Filed:	February 29, 2000)	Confirmation No. 1357
)	
For:	SHINGLE FOR OPTICALLY SIMULATING A SLATE ROOF)	Attorney Docket No.: 24673A
)	

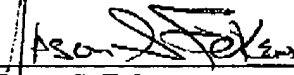
**REMARKS ACCOMPANYING REQUEST
FOR PRE-APPEAL BRIEF CONFERENCE**

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Honorable Sir:

Pursuant to the procedure specified in the Notice published in the Official Gazette on July 12, 2005, a pre-appeal conference is requested in the present application for the reasons set forth below. Please charge any necessary fees to Deposit Account No. 50-0568.

Respectfully submitted,


Jason S. Fokens
Reg. No. 56,188

Date: 12/6/07
Law Dept./Attn. Docket Administrator
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REMARKS

Claims 17, 46-48, 53-58, 65-68 and 70 are pending in the application. In the Office Action dated September 19, 2007, these claims were finally rejected. The rejection of these claims contains error in that limitations of these claims are clearly not met by the cited references.

I. Rejection of Independent Claim 67

In the outstanding Office Action, independent Claim 67 was rejected under U.S.C. 103(a) as being unpatentable over U.S. Patent 6,014,847 to Phillips in view of U.S. Patent 1,843,370 to Overbury.

The combination of the Phillips and Overbury references fails to teach all of the limitations of Applicant's independent Claim 67. The Phillips reference teaches a laminated shingle having an underlay attached to an overlay. The overlay has spaced apart tabs coated with a layer of colored granules. However, the Phillips reference fails to disclose the limitation that one of the color blends of the tabs occurs more frequently than any of the other color blends of the tabs to the extent that a predominant tab color blend is defined, with the other color blends being accent colors that occur less frequently in the roof covering, and with the predominant color blend being sufficiently prevalent to provide the appearance of a roof covering that simulates a natural slate roof.

The Overbury reference fails to supply the missing limitation of the predominant color blend being sufficiently prevalent to provide the appearance of a roof covering that simulates a natural slate roof. Applicant asserts a natural slate roof has one color occurring more frequently so as to be a prevalent color, with the remaining colors being present for accent or variety. Further, it is common for the area of the predominant color of a natural slate roof to be higher than 60% and in some cases to be as high as 70-80%. Applicant's assertions are supported by the Affidavit of Mr. Donn. R. Vermilion entered into the record on July 10, 2007.

There are a number of reasons why the Overbury reference fails to supply the missing limitation of the predominant color blend being sufficiently prevalent to provide the appearance of the roofing covering a natural slate roof.

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First, even though the Overbury reference discloses a shingle having a surface layer of crushed slate, using crushed slate as a surfacing material would give the roof an appearance of a single color, i.e., the color of the slate material used for the crushed slate layer. As explained in Applicant's response dated July 10, 2007, beginning at page 9, beginning in the last paragraph, the single uniform color of the comminuted material, even in the event the comminuted material is crushed slate, would not have the appearance of a natural slate roof. The single uniform color of Overbury would not have a predominant color blend with other color blends being accent colors that occur less frequently as claimed in Applicant's independent Claim 67.

Second, as discussed at page 10, beginning at line 5 of Applicant's response dated July 10, 2007, the Overbury reference fails to disclose a frequently occurring color blend defining a predominant color that simulates a natural slate roof, with the remainder of the tiles being of an accent color. Rather, the Overbury reference discloses that the resurfacing material can be colored, and that the colors of the additional layer of surfacing material can be arranged so that each color is confined to a portion of the strip shingle which corresponds to one tab of the shingle. Further, Overbury discloses that the color of each tab is different from that of another tab. Applicant asserts that a natural slate roof has the appearance wherein one of the color blends occurs with enough frequency so as to define a predominant color, with other color blends occurring for accent. The predominant color, being sufficiently prevalent and accented by other color blends, simulates the appearance of a natural slate roof. There is nothing contained in the Overbury reference that shows or suggests the claimed limitation of a frequently occurring color blend defining a predominant color that simulates a natural slate roof, with the remainder of the tiles being of an accent color.

Third, as discussed in Applicant's response dated July 10, 2007, beginning at page 10, beginning at the second paragraph, the Overbury reference discloses that each shingle "will have a solid color different from other tabs in the strip, although if desired two or more adjacent tabs may now and then be given the same

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color." [Emphasis added]. This is a teaching that the one color would occur more frequently than other colors. The term "now and then" would be interpreted by a person of ordinary skill in the art to mean only occasionally, and would not be interpreted to mean that one color would be a predominant color of sufficient frequency or surface area to give the appearance of a natural slate roof as claimed in Applicant's independent Claim 67. Applicant's assertion of the interpretation of "now and then" as used in the Overbury reference is supported by the Affidavit of Mr. Vermilion.

Fourth, as discussed at page 10, beginning in the final paragraph of Applicant's response dated July 10, 2007, there is no disclosure or suggestion in either reference directing anyone to increase the surface exposure of any one color to make the one color a predominant color to the extent that the roof covering has an appearance that simulates a natural slate roof. Overbury's shingle, disclosed in Fig. 6, shows that the leftmost tab is wider than any of the other tabs, and therefore the color of that tab would have more exposed area or coverage area when the shingles are installed as a roof covering. However, as explained in the July 10, 2007 response beginning in the final paragraph at page 10, at best the most predominant color would amount to about one-third of the surface area of the roof covering. Therefore, the roof covering of the combined Phillips and Overbury references would not have an appearance of a natural slate roof.

Fifth, Applicant asserts there is nothing in the knowledge generally possessed by one of ordinary skill in the art which would lead to modifying either of the references to provide one color of sufficient frequency or coverage area to simulate a natural slate roof.

II. Rejection of Independent Claims 17, 55 and 67 (Hulett and Overbury)

In the outstanding Office Action, independent Claims 17, 55 and 67 were rejected under U.S.C. 103(a) as being unpatentable over Hulett in view of Overbury.

The Hulett reference discloses laminated shingles having a second substrate adhered to a first substrate. The first substrate has a plurality of tabs separated by

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cutouts. The second substrate is provided with darker granules that show through the cutouts. However, the Hulett reference fails to teach the limitation that one of the color blends of the tabs occurs more frequently than any of the other color blends to the extent that a predominant tab color blend is defined, with other color blends being accent colors that occur less frequently, and with the predominant color blend being sufficiently prevalent to provide the appearance of a roof covering that simulates a natural slate roof. The Overbury reference fails to supply the missing limitation of a predominant color blend being sufficiently prevalent for the reasons discussed above. This is explained in Applicant's response dated July 10, 2007 at page 12 beginning at the first paragraph.

III. Rejection of Independent Claims 17, 55 and 67 (Bondoc and Overbury)

In the outstanding Office Action, independent Claims 17, 55 and 67 were rejected under U.S.C. 103(a) as being unpatentable over Bondoc in view of Overbury.

The Bondoc reference discloses a composite shingle having a backup strip adhered to a top sheet. The top sheet has a plurality of tabs separated by cutouts. The backup strip has a distinguishable hue or color which is visible between the cutouts. However, the Bondoc reference fails to teach the limitation that one of the color blends of the tabs occurs more frequently than any of the other color blends to the extent that a predominant tab color blend is defined, with the other color blends being accent colors that occur less frequently, and with the predominant color blend being sufficiently prevalent to provide the appearance of a roof covering simulates a natural slate roof.

The Overbury reference fails to supply the missing limitation of a predominant color blend being sufficiently prevalent for the reasons discussed above. This is explained in Applicant's response dated July 10, 2007 at page 13 beginning at line 4.

In view of the above remarks, Applicant requests withdrawal of the rejections, and allowance of the claims.